A

TENAGA NASIONAL BHD v. UNGGUL TANGKAS SDN BHD & ANOR AND OTHER APPEALS

COURT OF APPEAL, PUTRAJAYA
ABANG ISKANDAR JCA
ZAMANI A RAHIM JCA
B ZALEHA YUSOF JCA
[APPEALS NO: B-02(IM)-119-04-2016,
B-02(IM)-120-04-2016, B-02(IM)-757-04-2016
& B-02(IM)-758-04-2016]
9 NOVEMBER 2016

C

CIVIL PROCEDURE: *Intervention – Application for – Land reference proceedings – Procedure for intervention – Whether procedure for objection against award complied with – Whether application to intervene abuse of court process – Whether applicant had direct legal interest – Whether applicant an aggrieved party – Land*
D *Acquisition Act 1960, s. 45 – Rules of Court 2012, O. 15*

LAND LAW: *Acquisition of land – Compensation – Objection against award – Failure to lodge objection in Form N of Land Acquisition Act 1960 – Whether procedure to object against award complied with – Whether beneficiary of acquired land could intervene in land reference proceedings – Land Acquisition Act 1960,*
E *s. 3(1)(a)*

Unggul Tangkas Sdn Bhd ('applicant') was the registered owner of two pieces of land ('scheduled land') which were acquired by the Land Administrator for Tenaga Nasional Berhad ('TNB') pursuant to s. 3(1)(a) of the Land Acquisition Act 1960 ('Act'). The applicant was awarded RM12,593,196
F ('award') as full compensation for its interest in the scheduled land, which was payable by TNB. Dissatisfied with the award, the applicant filed an objection in Form N to the Land Administrator and the matter was referred to the High Court. TNB filed applications under O. 15 r. 6 of the Rules of Court 2012 ('ROC') for leave to intervene ('encl. 7') in the land reference
G proceedings. It was TNB's submission that s. 45 of the Act stipulates that O. 15 of the ROC ought to be applicable. In objecting to the applications, the applicant averred that TNB failed to comply with the procedure for objection to the award provided by ss. 37(3) and 38 of the Act and the applications to intervene were an abuse of the court process. The High Court allowed encl.
H 7 and TNB was added as the intervener/second respondent in the land reference proceedings but was not allowed to file its valuation and rebuttal reports. Aggrieved by the High Court's decision, (i) the applicant appealed against the decision of allowing encl. 7 ('Appeal Nos. 757 and 758'); while (ii) TNB appealed against the decision of not allowing it to file its valuation
I and rebuttal reports ('Appeal Nos. 119 and 120). The issue that arose for the court's determination was whether TNB could intervene despite failing to participate in the proceedings before the Land Administrator and failing to lodge an objection in Form N with the High Court.

Held (allowing Appeal Nos. 757 and 758; dismissing Appeal Nos. 119 and 120)

Per Abang Iskandar JCA delivering the judgment of the court:

(1) Section 45(2) of the Act does not lend assistance to TNB's cause. Section 45 of the Act stipulates that, *inter alia*, it does not allow for a *carte blanche* importation of the ROC *in toto*. It only allows for the ROC to be applied in appropriate circumstances and does not make the application of all provisions in the ROC to be applicable to proceedings emanating from the Act. The ROC is only applicable as long as they do not run counter to the provisions of the Act itself. At best, its application to the Act, if at all appropriate, is complementary. Order 15 of the ROC had no application in this situation. (paras 21, 22 & 29)

(2) TNB was a beneficiary of the acquired land and could not be said to have a direct legal interest. The records of proceedings before the Land Administrator showed that it was never a party in the said proceedings. Neither did the records show that TNB had tendered any valuation report pertaining to the scheduled land. It was not indicated that the valuation report tendered by the acquiring party was supplied by TNB. TNB was not an aggrieved party by the award; it was only apprehensive that the result of the land references before the High Court might adversely tamper with the award handed down by the Land Administrator. (para 25)

(3) Enclosure 7 ought not to have been allowed by the High Court Judge. The Third Schedule of the Act clearly points out to the conclusion that the land reference before the High Court is specifically crafted and drafted in such a manner that only specified parties are allowed to participate in the proceedings. TNB is not a party who is within the contemplation of Parliament as a party who could be heard in the land reference proceedings as an intervener or as a co-respondent in the circumstances of this case. TNB ought to have filed in Form N if it was desirous of being heard in the land reference proceedings in the High Court if it was not happy with the award. (para 29)

***Bahasa Malaysia** Headnotes*

Unggul Tangkas Sdn Bhd ('pemohon') adalah pemilik berdaftar dua bidang tanah ('tanah terjadual') yang diambil alih oleh Pentadbir Tanah bagi Tenaga Nasional Berhad ('TNB') di bawah s. 3(1)(a) Akta Pengambilan Tanah 1960 ('Akta'). Pemohon diawardkan RM12,593,196 ('award') iaitu pampasan penuh kepentingannya dalam tanah terjadual tersebut dan ini perlu dibayar oleh TNB. Tidak berpuas hati dengan award yang diberi, pemohon memfailkan bantahan melalui Borang N kepada Pentadbir Tanah dan hal perkara ini dirujuk kepada Mahkamah Tinggi. TNB memfailkan permohonan-permohonan di bawah A. 15 k. 6 Kaedah-Kaedah Mahkamah

('KKM') bagi kebenaran mencelah ('lampiran 7') dalam prosiding rujukan tanah. TNB menghujahkan s. 45 Akta menyatakan bahawa A. 15 KKM seharusnya terpakai. Dalam membantah permohohan-permohonan ini, pemohon mendalihkan TNB gagal mematuhi tatacara bantahan award di bawah ss. 37(3) dan 38 Akta dan permohonan-permohonannya untuk mencelah adalah salah guna proses mahkamah. Mahkamah Tinggi membenarkan lampiran 7 dan TNB dinamakan sebagai pencelah/responden kedua dalam prosiding rujukan tanah tetapi tidak dibenarkan memfailkan laporan penilaian dan bantahan. Terkilan dengan keputusan Mahkamah Tinggi, (i) pemohon merayu terhadap keputusan membenarkan lampiran 7 ('Rayuan No. 757 dan 758'); manakala (ii) TNB merayu terhadap keputusan tidak membenarkannya memfailkan laporan penilaian dan bantahan ('Rayuan No. 119 dan 120'). Isu yang terbit untuk diputuskan oleh mahkamah adalah sama ada TNB boleh mencelah walaupun tidak turut serta dalam prosiding Pentadbir Tanah dan tidak memfailkan bantahan melalui Borang N di Mahkamah Tinggi.

Diputuskan (membenarkan Rayuan No. 757 dan 758; menolak Rayuan No. 119 dan 120)

Oleh Abang Iskandar HMR menyampaikan penghakiman mahkamah:

(1) Seksyen 45(2) tidak menyokong hujahan TNB. Seksyen 45 Akta memperuntukkan, antara lain, peruntukan ini tidak membenarkan kuasa penuh pemindahan KKM sepenuhnya. Peruntukan ini hanya membenarkan KKM terpakai dalam hal-hal keadaan yang sesuai dan tidak menjadikan semua peruntukan KKM terpakai dalam prosiding-prosiding yang timbul daripada Akta. Kaedah-Kaedah Mahkamah 2012 hanya terpakai selagi tidak bertentangan dengan peruntukan-peruntukan Akta. Paling tidak, pemakaian KKM pada Akta, jika pun sesuai, hanya sebagai pelengkap. Aturan 15 KKM tidak terpakai dalam situasi ini.

(2) TNB adalah benefisiari tanah yang diambil alih dan tidak boleh dikatakan mempunyai kepentingan secara langsung di bawah undang-undang. Rekod prosiding Pentadbir Tanah menunjukkan TNB bukan pihak dalam prosiding tersebut. Rekod juga tidak menunjukkan TNB ada mengemukakan laporan penilaian tanah terjadual itu. Tidak dinyatakan bahawa laporan penilaian yang dikemukakan oleh pihak yang mengambil alih disediakan oleh TNB. TNB bukan pihak yang terkilan oleh award; TNB hanya khuatir keputusan rujukan tanah di Mahkamah Tinggi akan menjejaskan award pentadbir tanah.

(3) Lampiran 7 tidak sepatutnya dibenarkan oleh Hakim Mahkamah Tinggi. Jadual Ketiga Akta jelas menyimpulkan bahawa rujukan tanah di Mahkamah Tinggi dibentuk dan dirangka khas dalam cara pihak-pihak khusus sahaja yang dibenarkan turut serta dalam prosiding. Berdasarkan hal keadaan kes ini, TNB bukan pihak yang dimaksudkan oleh Parlimen

sebagai pihak yang boleh didengar dalam prosiding rujukan tanah sama ada sebagai pencelah mahupun responden bersama. TNB sepatutnya memfailkan Borang N jika ingin didengar dalam prosiding rujukan tanah di Mahkamah Tinggi sekiranya tidak berpuas hati dengan award.

Case(s) referred to:

Collector Of Land Revenue v. Alagappa Chettiar And Collector Of Land Revenue v. Ong Thye Eng And Cross Appeals [1968] 1 LNS 31 PC ***(refd)***

Damai Motor Kredit Sdn Bhd & Anor v. Kementerian Kerja Raya Malaysia [2015] 1 CLJ 44 CA ***(refd)***

Gurtner v. Circuit [1968] 1 All ER 328 ***(refd)***

Pegang Mining Co Ltd v. Choong Sam & Ors [1968] 1 LNS 96 PC ***(refd)***

Sistem Lingkaran Lebuhraya Kajang Sdn Bhd v. Inch Kenneth Kajang Rubber Ltd & Anor And Other Appeals [2011] 1 CLJ 95 CA ***(refd)***

Sistem Penyuraian Trafik KL Barat Sdn Bhd v. Kenny Heights Development Sdn Bhd & Anor [2009] 4 CLJ 57 CA ***(refd)***

Tohtonku Sdn Bhd v. Superace (M) Sdn Bhd [1992] 2 CLJ 1153; [1992] 1 CLJ (Rep) 344 SC ***(refd)***

Young v. Bristol Aeroplane Co Ltd [1944] KB 718 ***(refd)***

Legislation referred to:

Land Acquisition Act 1960, ss. 2, 3(1)(a), 37(1), (3), 38(1), 45(2), Third Schedule
Rules of Court 2012, O. 15 r. 6(2)(b)
Rules of the High Court 1980, O. 15 r. 6(2)(b)

(Appeal No: B-01(IM)-119-04-2016 & B-01(IM)-120-04-2016)

For the appellant - Steven Thiru, Mehala Marimuthoo & David Ng Yew Kiat; M/s Shook Lin & Bok

For the 1st respondent - Malik Imtiaz, Lye Wing Voi, Yap Hsu-Lyn & Pavandeep Singh; M/s WV Lye & Partners

For the 2nd respondent - Muhammad Haziq Hashim; State Legal Advisor

(Appeal No: B-01(IM)-757-04-2016 & B-01(IM)-758-04-2016)

For the appellant - Malik Imtiaz, Lye Wing Voi, Yap Hsu-Lyn & Pavandeep Singh; M/s WV Lye & Partners

For the respondent - Steven Thiru, Mehala Marimuthoo & David Ng Yew Kiat; M/s Shook Lin & Bok

[Editor's note: For the High Court judgment, please see Unggul Tangkas Sdn Bhd v. Pentadbir Tanah Daerah Gombak; Tenaga Nasional Bhd (Intervener) [2016] 1 LNS 786 (overruled in part).]

Reported by Najib Tamby

JUDGMENT

Abang Iskandar JCA:

Brief Facts Of The Case

[1] Unggul Tangkas Sdn Bhd, ("the applicant/landowner") is the registered owner of two pieces of the land identified as Lot PT 9011, HSD 80906 ("Lot 9011") and Lot PT 9012, HSD 80907, ("Lot 9012"), Mukim Bandar Rawang, Daerah Gombak, Selangor measuring 3.4692 hectares ("the scheduled land").

[2] The scheduled land was acquired by Pentadbir Tanah, Pejabat Tanah dan Daerah Gombak ("the respondent") for Tenaga Nasional Berhad ("TNB"), the intended intervener pursuant to s. 3(1)(a) of the Land Acquisition Act 1960 ("the LA Act 1960") for the purposes of upgrading TNB's transmission line 33KV to 275KV from PMU Bukit Tarik to PMU Chubadak (Central Area Reinforcement Project) ("CAR").

[3] On 1 June 2015, the applicant/landowner was awarded RM12, 593,196 as full compensation for its interest in the scheduled land, which was payable by TNB.

[4] Dissatisfied with the amount of compensation, the applicant/land owner filed an objection in Form N to the respondent. The matter was then referred to the High Court. For Lot 9011, it was registered under Land Reference No 15-83-09-2015 ("LR 83") while for Lot 9012, it was registered under Land Reference No 15-85-09-2015 ("LR 85").

[5] Being an interested party in the acquisition of the scheduled land, TNB filed an application for leave to intervene (encl. 7) in the land reference proceedings, for each case (LR 83 and LR 85), for it to be added as the intervener/second respondent in both cases. The applications were heard together in the High Court.

[6] Objecting the applications, the applicant/landowner averred that TNB had failed to comply with the procedure for objection to the amount of the award as allowed for under s. 37(3) and s. 38 of the LA Act 1960.

[7] According to the applicant/landowner, TNB had failed to make a written application in Form N to the Land Administrator, thus making the application to intervene an abuse of court process. Besides, at no material time did TNB submit any valuation reports nor had they taken part in the proceedings before the Land Administrator ("the LA").

[8] On 28 March 2016, the learned High Court Judge allowed encl. 7 ie, TNB's applications for leave to intervene in both LR 83 and 85, to be added as the intervener/second respondent in both cases. However, TNB was not allowed to file its valuation report and rebuttal report.

The Appeals

[9] Aggrieved by the said decision, both parties, the applicant/landowner and TNB appealed against it to the Court of Appeal.

[10] TNB's appeal against the decision of not allowing it to file its valuation report and rebuttal report for LR 83 is *vide* Appeal B-01(IM)-119-04-2016 ("appeal 119") while for LR 85 is *vide* Appeal B-01(IM)-120-04-2016 ("appeal 120").

[11] The applicant/landowner appealed against the decision of the High Court in allowing TNB to intervene in the land reference proceedings. For LR 83, its appeal is *vide* Appeal B-01(IM)-757-04-2016 ("appeal 757"), while for LR 85 its appeal is *vide* Appeal B-01(IM)-758-04-2016 ("appeal 758").

[12] All these four appeals were fixed for hearing before us, however parties agreed for Appeal Nos. 757 and 758 to be heard first as the outcome of these two appeals would impact significantly on the Appeal Nos. 119 and 120. Premised on that mutual understanding between the parties, we had proceeded to hear submissions by both parties in respect of Appeal Nos. 757 and 758 and reserved the other two appeals until Appeal Nos. 757 and 758 on leave to intervene granted to TNB are resolved.

Issues Raised By Parties

[13] In its submissions, the applicant/landowner had raised the following issues:

(a) Whether TNB ought to have been allowed to intervene notwithstanding that it has failed to participate in the proceedings before the LA, and that it never lodged an objection in Form N with the High Court pursuant to s. 37(1) and 38(1) of the LA Act 1960; and

(b) If so, whether TNB ought to be allowed to file a valuation report for the purpose of the land reference proceedings despite it not having put any report before the LA. But this issue pertaining to the valuation report by TNB must be reserved for mature submissions by both parties, only if the learned High Court Judge was correct in allowing TNB to intervene as prayed for in encl. 7.

[14] On the other hand, TNB raised the issue of whether, upon the applicant/land owner filing the notice of objection in Form N (per ss. 37(1) and 38(1) of the LA Act 1960) in respect of the quantum of compensation awarded by the LA to it and the LA referring the matter to the High Court, TNB can intervene in the land reference proceedings in the High Court as it was the "paymaster" and as a "person interested", thus it ought to be heard in order to safeguard its interest in the matter.

Salient Features From The Facts

[15] We believe that we should begin by looking at encl. 7 itself for in it lays the genesis of this matter. Enclosure 7 has been the application by the TNB to be granted leave to intervene in the High Court proceedings. Those High Court proceedings were concerned with the appeal by the applicant/landowner against the amount of the award that was given to it as compensation for its lands that were acquired by the State Authority for the benefit of TNB.

[16] Essentially, it was the applicant/land owner who was aggrieved by the award that was handed down as compensation for the acquisition. As a result thereof, it had filed in Form N under the Act in order to challenge the amount of the said compensation.

[17] The undisputed facts had also shown that during the land acquisition hearing before the LA, the land acquirer was present. So was the landowner (now the applicant). TNB was also present. This was evidenced by the presence of its officers whose names appeared in the record of attendance during the said proceedings. It was also not disputed that during the course of the acquiring hearing, TNB was not named as a party thereto. Neither was it present there as an intervener. Neither did it present any valuation report pertaining to the said land that was then the subject matter of the acquisition exercise. Apparently, it was present because it would be the beneficiary of the acquired land. Indeed, the subject land was acquired by Pentadbir Tanah, Pejabat Tanah dan Daerah, Daerah Gombak, for TNB for the purpose of upgrading TNB's transmission line 33KV to 275KV from PMU Bukit Tarik to PMU Chubadak, the so-called Central Area Reinforcement Project or "CAR". At the end of the hearing exercise, an award in the sum of RM12,593,196 was handed down to the landowner. It was much aggrieved by the award of compensation for his land and it had since filed his Notice N as required of it under the LA Act 1960, as it was desirous of challenging that award. It had since become the appellant before the High Court pertaining to the awards of compensation.

[18] But TNB was actually satisfied with the said amount of compensation which it had to pay as the paymaster. The acquirer too was satisfied with the award that was handed down. There was therefore, no filing of Form N by either TNB or the acquirer. However, TNB was desirous of being made an intervenor during the High Court hearing. The reason being that it was minded of defending the award, lest the High Court may increase the amount of the compensation for the acquired land. Can it do that?

[19] It is noted that TNB had founded its application in encl. 7 under O. 15 r. 6 of the Rules of Court 2012 ('the ROC 2012'). Order 15 r. 6 of the ROC 2012 pertains to right to intervene in any ongoing proceedings before the court.

[20] For ease of convenience, we reproduce O. 15 r. 6 of the ROC 2012. It reads as follows:

> 6. Misjoinder and non-joinder of parties (O. 15, r. 6(2)(b))
>
> (1) …
>
> (2) Subject to this rule, at any stage of the proceedings in any cause or matter, the Court may on such terms as it thinks just and either of its own motion or on application:
>
> (a) order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;
>
> (b) order any of the following persons to be added as a party, namely:

(i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon; or

(ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which, in the opinion of the Court, would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.

[21] Learned counsel for TNB had submitted that O. 15 of the ROC 2012 ought to be applicable. It was submitted that TNB had a legal interest in the matter. He had cited to us that s. 45 of the LA Act 1960 is the authority for the proposition that the O. 15 of the ROC 2012 ought to be applicable. We reproduce s. 45 which provides as follows:

> Save insofar as they may be inconsistent with anything contained in this Act, the law for the time being in force relating to civil procedure shall apply to all proceedings before the Court under this Act.

[22] With respect, we agree with learned counsel for the applicant/land owner that s. 45(2) of the LA Act 1960 does not lend assistance to TNB's cause. Section 45 of the LA Act 1960 says *inter alia*, it does not allow for a *carte blanche* importation of the Rules of Court 2012 *in toto*. It only allows for the Rules of Court 2012 to be applied in appropriate circumstances. It does not make the application of all provisions in the Rules of Court 2012 to be applicable to proceedings emanating from the LA Act 1960. Our construction of s. 45 of the LA Act 1960 is that the Rules of Court 2012 is applicable as long as they do not run contrary to the provisions, in the context of the provisions of the LA Act 1960 itself. At the highest, its application to the LA Act 1960, if at all appropriate, it is complementary.

[23] Learned counsel for the applicant/landowner had cited before us the case of *Sistem Lingkaran Lebuhraya Kajang Sdn Bhd v. Inch Kenneth Kajang Rubber Ltd & Anor And Other Appeals* [2011] 1 CLJ 95 ("*SILK* case"), where learned Justice KN Segara JCA had occasion to say:

> [16] In the over-all scheme and context of the Land Acquisition Act, any application by the appellant under O. 15 r. 6(2)(b) RHC 1980 to be made a party, is inappropriate. It would amount to an abuse of the process of the court and an attempt to circumvent the clear and unambiguous provisions of the LAA 1960 as regards to the manner and circumstances in which 'persons interested' under the LAA 1960 are to participate in proceedings either before the Land Administrator at an enquiry or, in court, upon a reference by the Land Administrator upon any objection to an Award. Filing of Form N is the most appropriate and the only mode available under the LAA 1960 to any person interested under the LAA 1960 to become a party in a Land Reference at the High Court relating to an objection to the amount of compensation.

[24] Having considered the authorities, we find no cogent reason to depart from the acute observations made by this bench in the *SILK* case *(supra)*. We agree with learned Justice KN Segara's conclusions made therein pertaining to the right to intervene by persons in the position of the eventual paymaster, just like TNB in the present appeal immediately before us. We noted the submissions by learned counsel for TNB on the general principles pertaining to the application of O. 15 r. 6 of the Rules of Court 2012 on intervenor application to be made a party in an ongoing court proceeding. Indeed, the observation made by Lord Denning MR in the English Court of Appeal case of *Gurtner v. Circuit* [1968] 1 All ER 328 has been highly instructive. But to every general rule there are always exceptions. To our mind, one such exception has been well articulated by learned Justice KN Segara JCA in the *SILK* case *(supra)*. In that regard, therefore, we are constrained to agree that the general principles applicable to intervention applications as laid down in *Pegang Mining Co Ltd v. Choong Sam & Ors* [1968] 1 LNS 96; [1969] 2 MLJ 52 have no bearing in the circumstances of this case.

[25] Even if we were wrong in saying that O. 15 of the ROC 2012 was not applicable in a land reference proceedings, we are of the view that TNB did not have legal interest and merely being the paymaster does not confer it with that enabling criterion. At the highest, it only has a pecuniary interest. That in itself does not equate a legal interest. That legal interest must also be direct. In the Supreme Court case of *Tohtonku Sdn Bhd v. Superace (M) Sdn Bhd* [1992] 2 CLJ 1153; [1992] 1 CLJ (Rep) 344 learned apex court justices had referred to Lord Diplock's speech in the Privy Council case of *Pegang Mining Company Ltd (supra)* in order to see whether the party's interest in the matter are either 'legal' or merely 'commercial' and quoted the learned Law Lords as to the test to be applied thereto, as follows:

> A better way of expressing the test is: will his rights against or liabilities to any party to the action in respect of the subject matter of the action be directly affected by any order which may be made in the action?

[26] In this case, the TNB was for all intent and purposes a beneficiary of the acquired land to be utilised for the purpose for which it was acquired. We do not see how it could be said that it had a direct legal interest. The records of proceedings before the LA showed that it was never a party in the said proceedings. Rather, it was present together with the legal team of the acquiring party, which was represented by the State Legal Advisor's officers. There was nothing on record to show that TNB was present as *amicus curiae* to assist the LA when so invited. Neither had the record shown that TNB had tendered any valuation report pertaining to the said land. It was not indicated that the valuation report tendered by the acquiring party was supplied by TNB. But what was clear was that TNB was not aggrieved by the amount of compensation that was awarded to the applicant/landowner. It was not an aggrieved party by the award. It was only apprehensive that

the result of the land reference before the learned High Court Judge might adversely tamper with the award handed down by the LA ultimately by increasing the award sum in favour of the applicant/landowner.

[27] On account of that and that alone, TNB had put in encl. 7 in order that it be heard. The fact that it may adversely affect its pocket is not denied. But here, it must be noted that TNB was not a party that was entirely alien to the proceedings before the LA. It was present and its interest was clearly taken care of by the legal team of the land acquirer. Anything that needed to be said for TNB must have been taken up by the acquiring party. If TNB wanted a lower value be attached to the land, it must have indicated the same to the officer of the State Legal Adviser. In fact, the same process could be replicated during the land reference before the High Court Judge. Looking at the order made by the learned High Court Judge in both enclosures under appeal before us, what was apparent was that while he allowed TNB to intervene, he denied it the right to tender any valuation report. What that seems to suggest, on the face of it must be that TNB was allowed to partake in the submissions based on the available evidence, but it was not allowed to tender fresh valuation report on the land or any rebuttal report.

[28] Again we would respectfully refer to the judgment of learned Justice KN Segara JCA in the *SILK* case *(supra)* where he had said as follows:

> [17] The Land Reference proceedings in this case before the High Court is essentially an enquiry to determine the fair compensation payable to the owner of the land who is dissatisfied with the Award of the Land Administrator as being low. Every opportunity was available to the appellant to have participated in the enquiry before the Land Administrator if it had asserted its rights to do so as being the eventual paymaster of any compensation awarded to the landowner. It is for the Land Administrator and/or his valuer, to file his valuation report at the Land Reference proceedings in the High Court pursuant to the 3rd Schedule to support his Award. It is neither open nor desirable for the appellant to file any valuation report to support the Award of the Land Administrator in the High Court. However, if the appellant had filed any valuation report in any enquiry before the Land Administrator the report would form part of the records before the High Court. Land Reference proceedings should not be protracted and delayed in the High Court by unnecessary interlocutory proceedings such as the present application by the appellant to intervene. Land Reference cases should be expeditiously disposed of in the High Court by strictly adhering to the evidence and procedure set out in the Third Schedule. *Sistem Penyuraian Trafik KL Barat Sdn Bhd v. Kenny Heights Development Sdn Bhd & Anor* [2009] 4 CLJ 57 and *Lembaga Lebuhraya Malaysia v. Cahaya Baru Development Bhd* [2010] 4 CLJ 419 can be easily distinguished on the facts *vide* to the present appellant's application in the High Court.

[29] Indeed, on the issue of TNB being desirous of defending the award, learned Justice KN Segara JCA, referred to what was said by Lord Diplock in *Collector Of Land Revenue v. Alagappa Chettiar And Collector Of Land Revenue v. Ong Thye Eng And Cross Appeals* [1968] 1 LNS 31; [1971] 1 MLJ 43, at p. 44:

> The onus lies upon the applicant to satisfy the Court by evidence that the amount of compensation awarded is inadequate; and the collector is entitled to call evidence in support of the amount awarded. His evidence is not confined to supporting the award upon the grounds stated in the notice of reference. He may amplify them or justify the amount awarded on other grounds. The Judge, with the assistance of the advice proffered to him by the assessors, makes his own estimate of the amount of compensation upon the evidence adduced before him; but if at the conclusion of the evidence he is not satisfied that the amount awarded by the collector is inadequate, the award must be upheld and the application dismissed.

[30] Premised on the above considerations, we are with the applicant/landowner that encl. 7 ought not to have been allowed by the learned High Court Judge. To recap, the scheme of things as expressly stipulated in the Third Schedule of the Act, clearly points to the conclusion that the land reference before the High Court is specifically crafted and drafted in such a manner that only specified parties are allowed to participate in the proceedings. The panel in the *SILK* case *(supra)* through the speech of learned Justice KN Segara JCA had identified who these parties are and a person in the shoes of TNB is not a party who is within the contemplation of Parliament as a party who could be heard in the land reference proceedings, as an intervenor or as a co-respondent in the circumstances of this case. TNB ought to have filed in Form N of the LA Act 1960 if it was desirous of being heard in the land reference proceedings in the High Court if it was not happy with the amount of compensation awarded to the landowner. To that extent, we agree that O. 15 of the ROC 2012 had no application in this situation.

[31] Even if O. 15 of the ROC 2012 were applicable in the scheme of things within the specific framework that is the LA Act 1960, we are not convinced that TNB was for all intents and purposes a person envisaged to have a direct interest in the matter. At its highest, TNB merely had, as a paymaster, a pecuniary interest. It therefore, had failed to meet the threshold requirement of it having met the critical element of a direct 'interest', as required under O. 15 of the ROC 2012.

[32] Having considered the totality of the records of appeal, we cannot but surmise that the application to intervene by TNB was made in abundance of caution. There is nothing to stop TNB to advise the State Legal Officers accordingly on the matter pertaining to the amount of the award of compensation in the course of the land reference proceedings in the High Court.

[33] We noted that the unanimous decision of this court in the case of *SILK (supra)* was not appealed against. Neither was it referred to in the *Damai Motor Kredit Sdn Bhd & Anor v. Kementerian Kerja Raya Malaysia* [2015] 1 CLJ 44 a case cited in support by learned counsel for the TNB. We will revert to that case and express our view on it shortly.

[34] For the present, it did not escape our attention that learned counsel for the TNB had also cited the case of *Sistem Penyuraian Trafik KL Barat Sdn Bhd v. Kenny Heights Development Sdn Bhd & Anor* [2009] 4 CLJ 57. That decision was a split decision of this court whereby the majority was of the view that O. 15 r. 6(2)(b) of the RHC 1980 was applicable in considering whether SPRINT as an 'interested party' could be rightly added in the land reference proceedings. Subsequent to that decision, the *SILK* case *(supra)* was decided, where the decision anchored on the learned Justice KN Segara's speech, was a unanimous one. The factual matrix, in material particular, in the *SILK* case *(supra)* was very similar to this instant case before us now. This unanimous decision has been referred to and dealt with by us rather extensively in the foregoing paragraphs of this judgment. Therefore, there appears to be a conflict between the two decisions of this court on the matter of intervention.

[35] So, what are we to do? Following the principles as laid down in the case of *Young v. Bristol Aeroplane Co Ltd* [1944] KB 718, the Court of Appeal is bound by its own decision unless there exist cogent reason or reasons for it to depart from its earlier decisions. When faced with a situation where there exist two conflicting decisions on the same issue, this court has a choice to choose which of the conflicting decisions to follow. When delivering the judgment of the English Court of Appeal in the *Young v. Bristol Aeroplane* case *(supra)*, Lord Greene MR had held:

> On a careful examination of the whole matter we have come to the clear conclusion that this court is bound to follow previous decisions of its own as well as those of courts of co-ordinate jurisdiction. The only exceptions to this rule (two of them apparent only) are those already mentioned which for convenience we here summarise: (1.) The court is entitled and bound to decide which of two conflicting decisions of its own it will follow. (2.) The court is bound to refuse to follow a decision of its own which, though not expressly overruled, cannot, in its opinion, stand with a decision of the House of Lords. (3.) The court is not bound to follow a decision of its own if it is satisfied that the decision was given *per incuriam.*

[36] In regard to this matter, we are of the considered view that this court in the *SILK* case *(supra)* had considered the totality of the circumstances in light of the LA Act 1960 and the kind of special regime that it has created, such that O. 15 r. 6 of the ROC 2012 was not applicable for the purpose of making a party either as a co-respondent or as an intervener.

[37] As regards the case of *Damai Motor Kredit (supra)* the factual matrix was quite easily distinguishable, in that in *Damai Motor Kredit* case *(supra)* the appellants/land owner whose land had been acquired under the LA Act 1960 was not informed and named as a party in the originating summons ("OS") filed by the respondent Kementerian Kerja Raya Malaysia in its OS application for extension of time to file Form N to the LA who had awarded a sum of award which was subsequently objected to by the respondent. The appellants did not know about the OS and were never served with the application. They only became aware of the OS after the application for an extension of time to file Form N with the LA was granted. They subsequently filed in the High Court a summons in chambers (the SIC) for leave to intervene in the action by the respondent and to set aside the court order granting the respondent the OS. The High Court dismissed the SIC which led to the appeal by the appellants to the Court of Appeal. In the Court of Appeal, Abdul Aziz JCA on behalf of the court held at paras. 17 and 18 that:

> [17] … the appellants do have a genuine and direct legal interest in the matter and that interest would definitely be affected by any order or judgment that might be made in the action particularly if the order or judgment resulted in the reduction of the amount of compensation awarded to the appellants, and which had been formalised by the issuance and acceptance of Form H, by the Land Administrator. This 'direct legal interest' test had been formulated and approved by the Supreme Court in *Tohtonku Sdn Bhd v. Superace (M) Sdn Bhd* [1992] 2 CLJ 1153; [1992] 1 CLJ (Rep) 344; [1992] 2 MLJ 63.
>
> [18] The appellants are also 'person interested' as defined by s. 2 of the Act. The meaning assigned to the expression 'person interested' by s. 2 of the Act 'includes every person claiming an interest in compensation to be made on account of the acquisition of land under this Act, but does not include a tenant at will.' Clearly therefore the appellants fall within that definition or meaning of 'person interested'. As mentioned earlier, the first appellant was the registered proprietor of the land involved in the acquisition and the second appellant was the developer to develop the land under a joint venture agreement with the first appellant. Moreover the inquiry as to the amount of compensation payable for the acquisition had been completed by the relevant Land Administrator and the award of compensation had been made by the Land Administrator and accepted by the appellants. In the circumstances, the Senior Federal Counsel who appeared for the respondent in this appeal had rightly conceded that the appellants have a legal interest in the matter in the action. Therefore, there is no issue that the appellants should be given leave to intervene.

[38] So, clearly the appellants in the *Damai Motor Kredit* case *(supra)* were persons who were within the contemplation of s. 2 of the LA Act 1960. The position of the appellants/landowners in the *Damai Motor Kredit* case *(supra)* was clearly made out, where their interests were at stake as land owners and such that within the context of the LA Act 1960, the question of them

applying to be made an intervener did not arise at all. They were the original parties in the proceedings before the LA. As such they ought to be named in the OS proceedings by the respondent. As the learned justices in the Court of Appeal had rightly ruled, the learned High Court Judge was in error when he denied the appellants' application to be made an intervener.

[39] But, with respect, however, the same cannot be said of TNB in our instant appeal. As was alluded to in the preceding paragraphs of this judgment, the factual matrix in this case would not warrant a similar treatment of TNB. We agree with Justice KN Segara JCA that the factual matrix between *SILK* case *(supra)* and *Sistem Penyuraian Trafik KL Barat (supra)* can be easily distinguished and if there be a conflict, with respect, we opt to follow the decision of this court in the *SILK* case *(supra)* over the decision of this court in the *Sistem Penyuraian Trafik KL Barat* case *(supra).*

[40] With respect, we had found no reason to disagree with what this court had said in the *SILK* case *(supra).* We found guidance from the decision in that *SILK* case *(supra)* which had considered the legal framework in the context of the LA Act 1960 on almost similar set of circumstances.

Our Findings And Conclusions

[41] As such, the Appeals No. 757 and No. 758 are allowed. We note that our decisions in the instant appeals would effectively put paid to Appeals No. 119 and No. 120 respectively despite the agreement between the parties that these appeals be dealt with after the disposal of the appeals relating to the issue of leave to intervene by TNB. That is simply because no intervention means the issue of putting in the valuation report as rebuttal report by TNB would not arise at all. We make no orders as to costs for those appeals so dismissed. Deposits are ordered to be refunded to the respective appellants.

[42] Having considered submissions on costs for Appeal Nos. 757 and 758, we award a global sum of RM10,000 to the appellant/land owner subject to payment of allocator. Deposits are refunded to the appellant.